IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CRL.A. No.786-DB of 2002**

DATE OF DECISION: February 25, 2008

RAJ BALA ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.**
**HON'BLE MR. JUSTICE RAKESH KUMAR GARG.**

PRESENT: MR. VINOD GHAI, ADVOCATE FOR THE PETITIONER.
MR. S.K. HOODA, SR.DAG, HARYANA.

**ASHUTOSH MOHUNTA, J.**

The appellant Raj Bala has filed this appeal challenging the judgement dated 29.7.2002, passed by Additional Sessions Judge, Jhajjar vide which she has been convicted under Section 302 IPC and has been sentenced to life imprisonment for murdering her only son Anil @ Sonu, aged 8½ years.

The factual matrix of the prosecution case is that the marriage of the accused (Raj Bala) got solemnised with Satbir Singh son of Zile Singh (Complainant PW-2) and out of this wedlock three sons were born to them of which two sons expired due to illness. Their third son Anil @ Sonu aged 8½ years was studying in 3rd standard in R.D. Public School. However, since the relationship between the accused and her husband were not cordial therefore she left her matrimonial home and went to her parental home in village Badhesra and even on compromise with the intervention of the panchayat she did not return to her matrimonial home.

On the fateful day of 10.02.1997, Anil @ Sonu grandson of the complainant (Zile Singh) was going to school from his house and when he reached *Jai Ma Bhartanwali Chopal* in the area of Mandhoti, the accused-mother of Anil caught him with the help of one Krishan on the pretext that Anil was not going to School and thereafter took the deceased to Sarsoan fields were she allegedly strangulated him by using her dupatta. By evening Anil did not return home and was searched for but could not be traced. Next day on 11.02.1997, around 7.00 A.M. Hansraj (Sarpanch) informed the complainant of a dead body lying on Mathan Road which was identified as that of Anil and alongside him his school bag was also lying there.

On 11.02.1997, FIR was registered at Police Station Sadar Bhadurgarh at 10.45 A.M. on the statement of Zile Singh PW-2, grandfather of the deceased and ASI Maha Singh (PW-17) started the investigation. Dead body of Anil was sent for post-mortem examination to PGIMS Rothak wherein the cause of death was opined to be due to strangulation which was sufficient to cause death in the ordinary course of nature. The autopsy was conducted by Dr. S.S. Dahiya, PW-4 and found the following injuries:

> "*1. There was a ligature mark over frontof neck over the thyroid cartilage. It was 1.5 cm wide and was extending left lateral and upwards from the midline up to sernomastoid muscle in a length of 6.0 cm. This mark was also extneded from the midlime towards right lateral upto right sternomastoie muscle in a length of 8.0 cm. This mark was reddish brown in colour. Underneath this mark, there was ecchymosis in the*

*underluying tissues. Laryingeal cavity was congested. Hyoid bone was in tact.*

*2. There were two linear abrasions present over the left cheek at the level of left angle of mouth going upwards, both abrasioins were 3.5 cm. Long.*

*3. An abrasion linear 2.5 cm. long was present over the left cheek, 1.0 cm above injury No.2 Underluying these two abrasions there was ecchymosis of blood present.*"

Further this witness has opined that the cause of death was asphyxia due to antemortem strangulation which was sufficient to cause death in ordinary course of nature.

In order to prove its case, the prosecution placed reliance on the statement of Zile Singh PW-2. This witness has stated that the marriage of his son Satbir was solemnized with the accused Raj Bala about 4-5 years ago. The relations between Raj Bala and Satbir had become strained about 7-8 months prior to the occurrence and she had started living with her mother in village Badhesra. About 6 months ago, a Panchayat had also been convened to sort out the differences between the two and a settlement was arrived at. But even after the settlement, Raj Bala had continued to live with her mother. It was further stated that on 10.2.1997, the deceased Anil @ Sonu was going to school and at that time Raj Bala who was the mother of the deceased had tried to catch the boy but Anil ran away. On this, the accused is alleged to have told Krishan son of Baljit to hold Anil so that she

could send him to the school as the boy was not wanting to go to school. The deceased was caught by Krishan and handed over to Raj Bala. In the evening when Anil did not reach home, a search was conducted but Anil could not be found. However, on the next day, i.e. on 11.2.1997, in the morning at about 7.00 a.m., the complainant was informed that dead body of a boy was lying in the kacha road of Matan road and on reaching the spot he found the dead body of his grandson which had ligature marks on the neck. A school bag was lying nearby. This witness had also stated that when a Panchayat was convened for effecting a compromise between his son Satbir and Raj Bala, Jaibir and Dharambir had said that they would finish the clan of Satbir. Zile Singh had stated that he suspected that his grandson has been murdered by the appellant and her brothers Jaibir and Dharambir by way of strangulation with a rope.

The prosecution has also relied upon the statement of Krishan PW-11, who deposed that on 10.2.1997, when he had left his house for going to his fields and had reached near the Chopal, at that time a boy named Anil had arrived there weeping who was followed by Raj Bala who was his mother. She had asked Krishan to catch hold of the boy as he was not going to school. Krishan is alleged to have intercepted the boy and handed over him to his mother Raj Bala. Next day, he came to know that the young boy whom he had handed over to Raj Bala was lying dead by the side of the road. He informed Zile Singh, PW-2, grand-father of the boy about the incident which happened on the previous day.

PW9 Baljit Singh has stated that on 10.2.1997, at about 7.30 a.m. when he was going to market of the village to make some purchases and when reached near the Chopal, he saw Raj Bala and one Krishan catching hold of

Anil @ Sonu. Krishan had caught the boy and handed over to Raj Bala. This witness has further stated that at that time Raj Bala said they wanted to send Anil to school.

The prosecution has also examined Satbir Singh, PW-15 who is the husband of the appellant. He has stated that three children were born out of the wedlock with Raj Bala, out of which two of them had unfortunately expired. He had also stated that he and Raj Bala were having strained relations and that a compromise was effected with the intervention of the Panchayat, but despite the settlement Raj Bala did not come to her matrimonial home. He has further stated that Jaibir had threatened him that his generation would be liquidated. He has stated that on 11.2.1997, the dead body was found on the katcha berm of Matan road and he suspected Raj Bala to have killed the young boy with the help of Jaibir. Lastly, the prosecution has also placed reliance on the statement of Hawa Singh, PW-7. This witness has stated that on 19.2.1997, at about 9.00 a.m.. when he was present at his house, the accused Raj Bala came and disclosed that on 10.2.1997, she had reached Mandhoti village and found Anil going towards the school. She asked a young man to catch Anil who had caught him and handed him over to the accused. Raj Bala thereafter is alleged to have taken him to the Sarson field and served him with ladoos, breads and peanuts. She was angry as her husband had not visited her. In order to take revenge with her husband, she put her duppata round the neck of Anil while he was asleep and strangulated him resulting in his death. Thereafter, she brought the dead body towards Matan road and threw the body on the katcha place and placed his school bag there and went back to Bhiwani.

Apart from the above formal witnesses, i.e. PW1 C. Jai Karan, PW-3 Balwant, PW-5 H.C. Jai Parkash, PW8 C. Randhir Singh, PW10

Mahabir Singh, PW12 Ravinder, PW14 Hari Singh, were also examined.

Both the accused denied the incident in their statements under Section 313 Cr.P.C.

The trial Court acquitted the accused Jaibir as there was insufficient evidence to connect him with the alleged offence but convicted the appellant Raj Bala of the murder of her minor son by placing reliance on the statements of the complainant Zile Singh, PW-2, the extra judicial confession of Raj Bala made before Hawa Singh, PW-7 and the statement of Krishan, PW-11 who is alleged to have last seen the accused with the deceased.

Mr. Vinod Ghai, counsel for the appellant has submitted that the entire case rests on circumstantial evidence. It is submitted that as far as the statement of Zile Singh PW-2 is concerned, this witness has categorically stated that the accused Jaibir and his brother Dharamvir has stated that they will finish the entire clan of Satbir but the name of the accused Raj Bala has no where been mentioned by PW-2. It is submitted by the counsel that Jaibir in the present case has been acquitted by the trial Court. It is also contended that as far as the statement of Zile Singh regarding the death of child Sonu is concerned, the same is merely hear-say, as he was informed about Sonu being in the company of his mother by Krishan. Therefore, hear-say evidence of Zile Singh, PW-2 is insufficient to convict the appellant for the murder of her only son Anil @ Sonu.

Learned counsel has further submitted that as far as the extra judicial confession made by the appellant before Hawa Singh is concerned, the same cannot be believed as Hawa Singh is the Zile Singh's wife's brother and lives in an entirely different village. It is argued that the accused could not have made the extra judicial confession before the person who was firstly not

directly related to her at all and secondly who was the brother-in-law of the complainant, Zile Singh. Apart from the above, Hawa Singh, PW-7 has stated that the extra-judicial confession was made by the accused while she was in a parda and as Hawa Singh and the accused had hardly met each other and belong to different villages, therefore, it was not possible for Hawa Singh to have recognized the appellant.

It has next been argued by Mr. Ghai, that as per the statement PW-11 Krishan, Raj Bala had asked him to catch hold of Anil as he was not going to school. Krishan is alleged to have intercepted the boy and handed him over to the appellant who is the deceased's mother. It is contended that it is natural for young child to be seen in the company of his mother, and therefore, this kind of last seen evidence cannot be believed to convict the appellant. It has lastly been argued that Zile Singh had stated that the boy has been strangulated with the help of a rope whereas, it has come in evidence that the deceased was strangulated with the help of Duppata. It is thus, contended that the ocular version with regard to the death of the deceased Anil is contrary to the medical evidence. Learned counsel further submits that the Duppata was never sent to the FSL for examination which casts a dent in the genuinety of the prosecution story.

We have heard counsel for the parties at length.

From the statement of Zile Singh, PW-2 and Satbir PW-15, it is clear that Raj Bala was having strained relations with her husband Satbir for the last 7-8 months only. A Panchayat had also been convened which settled the dispute between the parties but despite that Raj Bala had not come back to her matrimonial home. Three sons had been born to Raj Bala out of whom two have expired. The strained relationship of 7 or 8 months which was

subsequently patched up cannot be said to be so serious so as to drive the mother to kill her only surviving son.

A perusal of the statement of Hawa Singh, PW-7 before whom the extra judicial confession was made by the accused shows that the child had remained with the mother for the entire day and the accused had served him with ladoos, bread and peanuts. This act on part of the accused shows that she was giving motherly treatment to the deceased and therefore, in these circumstances it is highly unlikely that she would strangulate her own son in order to teach a lesson to her husband.

A perusal of the statement of Zile Singh also shows that it was Jaibir and Dharamvir who had threatened that they would finish his entire generation. Such words have not been attributed to the accused. Jaibir has already been given the benefit of doubt by the trial Court of the utterances made by him and has been acquitted. Thus, in these circumstances, the appellant cannot be held liable for the threats given by her brothers.

As far as the last seen evidence is concerned, Krishan PW-11 has stated that he had intercepted the deceased on the asking of the appellant and had caught him over to Raj Bala. It was natural for the appellant who is the mother of the deceased to ask her son to go to school as she was unable to catch hold of him, therefore, she requested Krishan PW-11 to catch him so that she could send him to school. The fact of a young boy being found in the company of his mother cannot be taken as instance which could be held to be against the mother, as a young child is most likely to be seen in the company of his mother. Thus, the last seen evidence which has been relied upon by the trial Court to convict the appellant is a weak type of evidence in the facts and circumstances of the case.

Apart from the above, the extra judicial confession allegedly made by Raj Bala before Hawa Singh PW-7 also cannot be relied upon as Hawa Singh is the Zile Singh's wife's brother and is thus very distantly related to the accused Raj Bala. PW-7 does not even belong to village Jhajgarh Majra whereas the parental house of the accused is situated as village Badhesra, therefore, there was no occasion for the appellant to go to the house of Hawa Singh, PW-7 who not only is very distantly related to her but also belongs to a different village and in fact has not close relationship with Hawa Singh, PW-7.

As far as the statement of Satbir Singh, PW-15 who is the husband of the appellant is concerned, he has merely stated that he and the appellant were having strained relations. He has narrated no particular incident to show that relationship between the two had degenerated into a hateful relationship. Moreover, it has come in evidence that the relations between Satbir and Raj Bala had become sour only about 7-8 months prior to the date of the incident and that the Panchayat had also tried to pacify both of them and a compromise had also been arrived at although not acted upon. Thus, it can safely be assumed that relationship between Satbir and Raj Bala was not such, so as to drive Raj Bala to kill her own young minor son.

In view of the aforementioned discussion, we are of the considered opinion that the prosecution has not been able to establish by any cogent evidence that it was the appellant who had committed the murder of her young son Anil @ Sonu. The trial Court has clearly erred in placing reliance on hear-say evidence of Zile Singh, the evidence of PW-7 Hawa Singh before whom extra judicial confession was made and the last seen evidence as narrated by Krishan PW-11.

As a result of our findings as above, we allow the appeal, set aside

the judgement dated 29.7.2002, passed by Additional Sessions Judge, Jhajjar and acquit the accused Raj Bala of the charges of murdering her son Anil @ Sonu under Section 302 IPC. The bail bonds of the appellant Raj Bala shall be discharged and she be released forthwith.

**(ASHUTOSH MOHUNTA)**
**JUDGE**

February 25, 2008
Gulati

**(RAKESH KUMAR GARG)**
**JUDGE**